

FILED

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ANTONIO AGUAYO GONZALEZ,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-74147

Agency No. A95-296-659

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted October 11, 2005^{**}

Before: T.G. NELSON, TALLMAN, and BEA, Circuit Judges.

Antonio Aguayo Gonzalez, a native and citizen of Mexico, petitions pro se for review of the Board of Immigration Appeals' ("BIA") denial of his motion to

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

reopen removal proceedings based on ineffective assistance of his legal representative. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen. *Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003). We deny the petition for review.

The BIA did not abuse its discretion in denying as untimely Gonzalez's motion to reopen because Gonzalez filed the motion more than ninety days after the BIA's final order of removal, *see* 8 U.S.C. § 1229a(c)(7)(C)(i), and did not show he was entitled to equitable tolling, *see Iturribarria*, 321 F.3d at 897 (equitable tolling applies "when a petitioner is prevented from filing because of deception, fraud, or error, as long as the petitioner acts with due diligence in discovering" the misconduct).

The BIA also acted within its discretion in denying the motion because Gonzalez failed to establish he was prejudiced by the claimed ineffective assistance. *See id.* at 903 (finding no prejudice caused by counsel's alleged ineffective assistance "given the strict standard for finding 'extreme' hardship" in suspension of deportation case).

PETITION FOR REVIEW DENIED.